

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED  
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Federal Communications Commission  
Office of Secretary

In the Matter of )

Request for Review by )

CONNECT2 INTERNET NETWORK, INC. )

of Decisions of Universal Service  
Administrator

CC Docket No. 02-06

471 Application No. 184985,  
Funding Request No. 383870

471 Application No. 148572,  
Funding Request No. 284676

471 Application No. 176664,  
Funding Request No. 354919

471 Application No. 195175,  
Funding Request Nos. 421315,  
421446, 421546 and 421681

471 Application No. 196013,  
Funding Request Nos. 424165,  
424201, 424283 and 424338

471 Application No. 145217  
Funding Request Nos. 234642,  
234710

471 Application No. 180900,  
Funding Request No. 368447

471 Application No. 145427,  
Funding Request Nos. 235099,  
235103 and 23510

471 Application No. 180657,  
Funding Request No. 367629

471 Application No. 180437,  
Funding Request No. 407356

471 Application No. 166150,  
Funding Request No. 336798

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CONSOLIDATED REQUEST FOR REVIEW AND PETITION FOR WAIVER

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## SUMMARY

The Commission should grant review of the captioned decisions by the Universal Service Administrative Company ("USAC") dismissing as untimely Connect2 Internet Network Inc.'s ("Connect2") appeals of recovery demands issued by the Schools and Libraries Division ("SLD") of USAC with respect to the Funding Requests and schools listed in Exhibit 1 hereto. USAC apparently based its determination of untimeliness on the date of Commitment Adjustment Letters purportedly sent to Connect2 on April 1, 2004, but Connect2 has no record of receiving any CALs with respect to the funding requests and schools at issue here. In fact, USAC's failure to provide any explanation for its recovery demands was one of the bases for Connect2's appeal. Contrary to USAC's determination, the appeals were timely filed within 60 days of the Recovery/Offset Demand Letters ("RODLs") issued by SLD -- the actions by which Connect2 was aggrieved.

In any event, the Commission should grant a waiver of any applicable filing deadline in order to consider the merits of Connect2's appeal. Connect2's participation in the E-Rate Program at numerous schools in New York and New Jersey (including St. Augustine School) already has been the subject of a criminal prosecution by the United States Department of Justice ("DOJ"). That prosecution, in which USAC and the Commission's Office of Inspector General ("OIG") actively participated, resulted in a plea agreement that provides, among other things, for a civil forfeiture of \$290,000, an amount which DOJ determined to represent "the amount of proceeds obtained as a result of the offense." Having determined that the claims against Connect2 involved an "indication of fraud, the presentation of a false claim, or a misrepresentation," the Commission was required to, and did, turn these matters over to DOJ for prosecution and cannot now revisit those claims in the form of the recovery actions based on rules and procedures adopted in the intervening years.

Connect2 and Mr. Angelides already have paid a huge price for their misconduct in the Schools and Libraries program. Connect2 is essentially out of business and Mr. Angelides, a 67 year old man who previously had no problems with the law and was well respected in his community, has pleaded guilty to felony charges, agreed to a substantial forfeiture, been debarred from the Schools and Libraries Program, and been diagnosed with terminal cancer. USAC's current recovery efforts are excessive and inequitable in that they seek recovery from Connect2 of more than \$2,600,000 in funds used to provide equipment and services to the listed schools, but Connect2 has not been informed of the basis for those demands. In the only case in which Connect2 has been provided any information regarding the basis for SLD's demands, an audit report for one of the schools was provided to Connect2 five months **after** the RODLs were issued and nearly one month **after** USAC has dismissed Connect2's appeal.

For the foregoing reasons, the Commission should grant review of the USAC Decisions, consider the merits of Connect2's appeal, and exercise its discretion to terminate collection efforts with respect to these claims. At a minimum, due process requires that Connect2 be afforded notice of the basis for, and an opportunity for hearing with respect to, the recovery demands at issue here.

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	)	<b>471 Application No. 184985</b>
<b>of Decisions of Universal Service</b>	)	<b>Funding Request No. 383870</b>
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	)	
	)	<b>471 Application No. 196013</b>
	)	<b>Funding Request Nos. 424165</b>
	)	<b>424201</b>
	)	<b>424283</b>
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	)	<b>Funding Request No. 407356</b>
	)	
	)	<b>471 Application No. 166150</b>
	)	<b>Funding Request No. 336798</b>

## **CONSOLIDATED REQUEST FOR REVIEW AND PETITION FOR WAIVER**

Connect2 Internet Networks, Inc. ("Connect2"), by counsel and pursuant to Sections 54.719 through 54.721 of the Commission's Rules, hereby requests review of the above-captioned decisions by the Universal Service Administrative Company, dated October 26, 2004 ("USAC Decisions"), dismissing without consideration Connect2's appeals of the Repayment/Offset Demand Letters ("RODLs") issued by the Schools and Libraries Division ("SLD") of USAC with respect to the Funding Requests and schools listed in Exhibit 1 hereto. USAC dismissed Connect2's appeals as untimely because it determined that the appeals "were postmarked more than 60 days after the date your Commitment Adjustment Letter was issued." However, Connect2 has no record of receiving any Commitment Adjustment Letters ("CALs") with respect to the schools and funding requests set forth in Exhibit 1, which are the subject of this Consolidated Request and Petition, and that was one of the bases for its appeal. Pursuant to Section 1.3 of the Commission's Rules, Connect2 also hereby petitions for waiver of the 60-day period within which to appeal the CALs, to the extent that CALs were issued and such waiver is required in order for USAC or the Commission to consider the substantive merits of Connect2's appeals.

The Commission should grant review, reverse the USAC Decisions and consider the substantive merits of Connect2's appeal because the appeal was not untimely and because: (a) Connect2's involvement in the E-Rate Program at these and numerous other schools in New York and New Jersey already has been the subject of a criminal prosecution by the United States Department of Justice ("DOJ") -- with the knowledge, participation and cooperation of USAC and the Commission's Office of Inspector General ("OIG") -- in which a compromise on these and other claims was reached in the form of a plea agreement and civil forfeiture over 18 months ago; (b) the determination to treat these matters as fraudulent claims by Connect2 required the

claims to be transferred to the DOJ, effectively depriving the Commission of jurisdiction over them; (c) Connect2 has been denied due process with respect to the SLD claims; (d) the amounts involved at certain of the schools are de minimis in any event and collection will require expenditure of amounts far exceeding the amounts at issue and; (e) the SLD's effort to recover substantial sums from Connect2 based solely on the school's failure to pay its non-discounted portion of the costs of the equipment and services installed by Connect2 at the schools is arbitrary and capricious. The Commission should exercise its discretion to cease collection activities against Connect2 with respect to these demands. In the event that the Commission decides to pursue these repayment demands, Connect2 respectfully requests appropriate notice of the basis for the demands and an opportunity for hearing.

### **Background**

In RODLs dated June 16, 2004, SLD claimed that Connect2 had been "recently sent a Commitment Adjustment Letter informing you of the need to recover funds for the Funding Request Numbers" identified in the RODL. The RODLs also demanded that Connect2 "return the total 'Funds to be Recovered' amount as specified on the Commitment Adjustment Letters you have been provided." See RODLs at 1.<sup>1</sup> In each case, the RODL was addressed to "Mr. John Angelides, Connect2 Internet Networks, Inc., 26 Bay Street, Staten Island, New York," despite the fact that Mr. Angelides had been debarred from all activities relating to the schools and libraries universal service support program more than six months earlier.<sup>2</sup> Connect2 has no record of receiving any CALs with respect to the schools and Funding Requests set forth

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<sup>1</sup> Copies of the relevant RODLs are annexed as Exhibit 2.

<sup>2</sup> On December 23, 2003, Mr. Angelides had been debarred by the Commission and was expressly prohibited from engaging in any activities "associated with or related to the schools and libraries support mechanism, including the receipt of funds or discounted services through the schools and libraries support mechanism...or consulting with, assisting or advising applicants or service providers regarding the schools and libraries support mechanism." See Notice of Debarment, DA 03-4088, 18 FCC Rcd 26722 (December 23, 2003) ("Angelides Debarment Notice").

in the RODLs that are the subject of this Consolidated Request and Petition. A second RODL regarding most of the funding requests and schools was sent on July 22, 2004.<sup>3</sup> The RODLs together demand repayment of more than \$2,600,000 in funds alleged to have been disbursed erroneously to Connect2 in Funding Years 1999 or 2000 in connection with equipment and services provided to the schools. The RODLs do not inform Connect2 of the basis for the contention that these funds were “erroneously disbursed.”

When it sent the RODLs to Mr. Angelides at the address set forth above, SLD and USAC knew or should have known that: (a) Mr. Angelides had been debarred in 2003 from all activities relating to the schools and libraries program; and (b) Connect2’s involvement in the schools and libraries program at schools in New York and New Jersey already had been the subject of a criminal prosecution by DOJ (in which USAC and OIG had cooperated), resulting in a plea agreement with Mr. Angelides which included a civil forfeiture of \$290,000, representing “the approximate amount of the proceeds obtained as a result of the offense.” On or about December 17, 2002, Mr. Angelides was arrested by agents of the FBI pursuant to an eight-count criminal complaint which alleged, among other things, that: (a) Mr. Angelides, acting on behalf of Connect2, had engaged in a scheme to defraud the E-Rate Program by failing to require schools to pay the non-discounted portion of the cost of equipment and services provided by Connect2; and (b) “the Government actually paid C2I more than \$9 million in E-rate monies for goods and services that C2I provided to approximately 36 schools” in the New York/New Jersey area, the majority of which “purported to participate [in the E-Rate Program] at an 90% discount rate.” See United States of America v. John Angelides, et al., Complaint, sworn to by FBI

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<sup>3</sup> Connect2 has no record of receiving a second RODL for any of the Funding Requests at the Islamic Elementary School (Funding Request Nos. 424165, 424201, 424283 and 424338).



Special Agent Courtney Foster on December 17, 2002, at ¶¶17-18. A copy of the Complaint is annexed as Exhibit 3.<sup>4</sup>

The Complaint expressly states that USAC provided the FBI and DOJ with “documents and materials” and other information about Connect2’s activities and involvement in the E-Rate Program. See, e.g. Complaint at ¶16 (“I have spoken with an attorney employed by a private, not-for-profit company called the Universal Service Administration Company (“USAC”), and have reviewed documents and materials provided to me by that attorney and her staff”) and ¶18 (“According to USAC records...the Government actually paid C2I more than \$9 million in E-Rate monies for goods and services that C2I provided to approximately 36 schools.”).<sup>5</sup> When Mr. Angelides was arrested, all of Connect2’s records regarding its dealings with USAC, the schools (including all of the schools at issue here) and the E-Rate Program were seized by the FBI and have never been returned.

On May 22, 2003, Mr. Angelides pleaded guilty to Count 1 of the Felony Information against him and admitted to the Forfeiture Allegation in that Information. Among other things, Count 1 of the Information states that “from July 1998 to the present, Connect2 was the vendor of goods and services for more than 200 schools participating in the E-rate Program” and that Mr. Angelides had devised and carried out a “fraudulent scheme” by which Connect2 obtained E-rate funds to provide goods and services to those schools. A copy of the Information is annexed as Exhibit 4. The fraud alleged in the Information consisted of failing to require the schools to pay the non-discounted portion of the cost of goods and services provided by

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<sup>4</sup> The Complaint also provides several examples of Connect2’s activities at specific schools, including the Association for the Help of Retarded Children (“AHRC”), St. Rocco Victoria School, and the Islamic Elementary School, each of which is the subject of certain of the RODLs and USAC Decisions at issue here. See Complaint at 6-7, 14-17, 21-28, 32-33.

<sup>5</sup> In addition to USAC, the OIG also participated actively in the prosecution efforts. See Office of the Inspector General, Semiannual Report to Congress, October 1, 2002 - March 31, 2003 (“2003 OIG Report”) at 7 (discussing audit support provided by OIG auditors for DOJ regarding an “ongoing criminal investigation” involving a service provider that “received more than \$9 million in E-Rate Funds for goods and services provided to approximately 36 schools” between July 1998 and June 2001).

Connect2 and subsequently attempting to cover up that failure. The Forfeiture Allegation of the Information stated that Mr. Angelides was to forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(c) and other provisions “a sum of money equal to approximately \$290,000...representing the amount of proceeds obtained as a result of the offense.” Information at 10-11.

The guilty plea was entered pursuant to a written plea agreement with the United States Department of Justice, acting through the United States Attorney for the Southern District of New York, which stated among other things that “neither the defendant nor Connect2 Internet Networks, Inc. will be further prosecuted criminally by this Office...for participating, from in or about the Fall of 1999 through in or about October 2002, in a scheme to defraud the Federal Government’s E-Rate school and library funding program through the submission of false, fraudulent and misleading claims and statements, as charged in the Information.” A copy of the written plea agreement is annexed as Exhibit 5. When the plea agreement was entered into, there were no outstanding demands from USAC or the Commission for further payment or recovery from Connect2 or Mr. Angelides.

Weeks after he pleaded guilty, Mr. Angelides was diagnosed with Stage IV metastasized non-small cell lung cancer, which has spread to his brain. He is terminally ill and continues to receive treatment at the Memorial Sloan-Kettering Cancer Center. Judge Griesa, who presided over the criminal proceedings, has postponed sentencing based on Mr. Angelides medical condition, with the acquiescence of the U.S. Attorney’s Office. Copies of medical reports and status reports to the court attesting to Mr. Angelides condition and the postponement of his sentencing are annexed as Exhibit 6.

On December 23, 2003, Mr. Angelides was debarred from the schools and libraries universal service support mechanism, and all activities “associated with or related to”

that program, for a period of three years. See Angelides Debarment Notice, 18 FCC Rcd. at 26722. The basis for the debarment was the guilty plea entered by Mr. Angelides in the criminal proceedings described above. See Notice of Suspension and Proposed Debarment, DA-03-2707, 18 FCC Rcd. 16672, August 21, 2003. Mr. Angelides did not contest his debarment.

On the same day, the Commission released a Further Notice of Proposed Rulemaking (“FNOPR”) seeking public comment on “the question of what recovery procedures would be appropriate in situations where it is determined that funds have been disbursed in violation of particular programmatic rules that do not implicate statutory requirements.” See Schools and Libraries Universal Service Support Mechanism, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd. 26912 (Dec. 23, 2003) at ¶79.<sup>6</sup> Pursuant to that FNOPR, the Commission in August 2004 revised and extended its oversight of, and supplemented the recovery procedures applicable to, the E-Rate Program. Among other things, the Commission concluded for the first time that the recovery procedures applicable to disbursements made in violation of the Telecommunications Act also should be applied by USAC to disbursements in violation of Commission rules and that “all funds disbursed should be recovered for any funding requests in which the beneficiary failed to pay its non-discounted share.” See Schools and Libraries Universal Service Support Mechanism, Fifth Report and Order, FCC 04-190, 19 FCC Rcd. 15808 (2004) (“Schools and Libraries Fifth R&O”) at ¶¶13, 15, 24. The Commission also determined that in cases involving equipment and service changes, the “appropriate amount to recover is the difference between what was originally approved for disbursement and what would have been approved had the entity requested and obtained authorization for a service substitution.” Id. at ¶23.

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<sup>6</sup> The Commission previously had adopted a plan for recovery of funds distributed in violation of the Telecommunications Act of 1996, specifically where funding had been committed for “ineligible services” or for “services provided by non-telecommunications carriers” in violation of Section 254 of the Communications Act. Id. at ¶79, n. 164.

Notwithstanding Mr. Angelides' guilty plea, the civil forfeiture amount agreed to by DOJ, and his subsequent debarment, in 2004 SLD began sending demand letters addressed to Mr. Angelides for Connect2 concerning the same E-Rate Program activities that were encompassed within the criminal prosecution and plea agreement. The RODLs at issue here are among more than 25 demand letters apparently sent to Mr. Angelides for Connect2, seeking total recoveries of nearly \$5,000,000. By letter dated July 20, 2004, Connect2 appealed the SLD's decisions demanding substantial repayments from Connect2 with respect to the funding requests at these schools. Among other things, Connect2's letter to USAC explained that: (a) Connect2's involvement in the schools and libraries program during this period of time already had been the subject of a criminal prosecution and plea agreement; (b) Mr. Angelides -- to whom all of the SLD correspondence had been addressed -- was undergoing extensive medical treatment for "Stage-IV metastasized non-small cell lung cancer, which has spread to the brain;" and (c) Connect2 had not received any explanation for the demand letters with respect to certain schools and funding requests. A copy of Connect2's July 20, 2004 Appeal Letter is attached as Exhibit 7. However, Connect2's appeal was summarily dismissed by USAC on October 26, 2004 because it was not filed within 60 days of April 1, 2004, apparently the date of the CALs purportedly sent to Connect2 with respect to these funding requests. Connect2 respectfully requests the Commission to review the USAC Decisions dismissing the appeals as untimely, to grant a waiver of the 60-day rule if necessary, and to consider the merits of its appeal with respect to the RODLs set forth in Exhibit 1.

### **Argument**

#### **I. Connect2's Appeal To USAC Was Not Untimely.**

Each of the USAC Decisions dated October 26, 2004 which are the subject of this Request and Petition dismissed Connect2's appeal without consideration for the same reason:

Our records show that your appeal was postmarked more than 60 days after the date your Commitment Adjustment Letter was issued, as shown above. Federal Communications Commission (FCC) rules require applicants to postmark appeals within 60 days of the date on the decision letter being appealed. FCC rules do not permit the SLD to consider your appeal.

See, e.g. USAC Decision Letter dated October 26, 2004 regarding AHRC, Application No. 184985, Funding Year 2000-2001, at 1. Although the USAC Decisions state that the applicable “Decision Letter Date” is April 1, 2004, which apparently is the date of the CALS referenced in the June 16, 2004 RODLs, Connect2 has no record of receiving CALs with respect to these schools and funding requests. In short, USAC summarily dismissed Connect2’s appeal because it was not filed within 60 days of the date of the CALs, even though one of the bases of Connect2’s appeal was that it had not received the CALs. The Commission should review and reverse the USAC Decisions because: (a) notices sent by SLD to Mr. Angelides months after he was debarred from all activities relating to the schools and libraries program cannot be relied upon to provide timely notice of SLD’s claims against Connect2 concerning that program; (b) the USAC decisions applied the wrong standard in finding the appeal untimely; (c) a waiver of the 60-day rule is warranted under the circumstances presented here; and (d) the substantive merits of Connect2’s appeals warrant consideration by the Commission in any event.

A. Correspondence Sent To Mr. Angelides After His Debarment Can Not Be Relied Upon To Provide Notice To Connect2.

Mr. Angelides was debarred by the Commission in December 2003 from all “activities associated with related to the schools and libraries support mechanism,” including “consulting with, assisting or advising applicants or service providers regarding the schools and libraries support mechanism.” Angelides Debarment Notice at 1-2. That debarment did not apply to Connect2. Id. at 2. Nevertheless, in April 2004 -- four months after his debarment -- SLD apparently chose to notify Connect2 of the CALs by sending them (if CALS were sent) to

Mr. Angelides. USAC then relied exclusively upon the efficacy of that notice in dismissing Connect2's appeal for failure to file within 60 days of the date of the CALs. Having debarred Mr. Angelides, SLD and USAC cannot now rely upon correspondence sent to him months after his debarment as sufficient to provide notice to Connect2, particularly when Connect2's appeal put USAC on notice that Connect2 had not received the CALs.

B. Connect2 Was Not "Aggrieved" Until The RODLs Were Issued.

Section 54.719(a) of the Commission's Rules states that any "person aggrieved by an action taken by a division of the administrator" may seek review of that decision at USAC. Section 54.720 provides that the requests must be filed within sixty days of the issuance of the decision by which the person was aggrieved. Although USAC dismissed Connect2's appeal because it was not filed within 60 days of the CALs that it did not receive, Connect2 was not aggrieved in any event until SLD sought recovery of funds from Connect2 in the RODLs. At that point, Connect2 became "a person aggrieved" by an action taken by a division of the Administrator because it was then clear that SLD and USAC were demanding substantial further payments from Connect2 -- notwithstanding the criminal prosecution and plea agreement, the imposition of a civil forfeiture, and the debarment of Mr. Angelides -- and had not provided Connect2 with any explanation of the basis for those demands. Accordingly, Connect2 filed a timely appeal to USAC as a party aggrieved by the actions of SLD within 60 days of the RODL.

C. Good Cause Exists For Waiver Of the 60 Day Filing Period

Even if USAC sent CALs to Connect2 and correctly determined that the time for filing Connect2's appeal began to run from the date of the CAL rather than the date of the first RODL, good cause exists for waiver of the 60 day rule and substantive consideration of the merits of Connect2's appeal. If CALs concerning Connect2 were sent, they apparently were sent to Mr. Angelides months after he was debarred, at a time when USAC knew or should have

known that Mr. Angelides was undergoing extensive medical treatments for lung cancer which had spread to his brain. Both USAC and the Commission actively cooperated with DOJ in the prosecution of Mr. Angelides and should have been aware of his medical condition -- which has led the presiding federal Judge to postpone sentencing of Mr. Angelides with the consent of the U.S. Attorney office that prosecuted him. See Exhibit 6. Connect2's July 20, 2004 appeal letter from counsel specifically informed USAC that Mr. Angelides "did not immediately bring the letters [from SLD] to our attention" due to his medical condition and that Connect2 had not received any explanation for several of the refund demands set forth in the RODLs. Connect2 should not be penalized because USAC elected to send the CALs to Mr. Angelides (if they were sent at all) after his debarment while he was undergoing cancer treatment.

The public interest also warrants a waiver of the procedural deadline (if necessary) and substantive consideration of the issues raised in Connect2's appeal. The Commission has stated that "if there are unique reasons why a particular entity believes recovery for a rule violation is inappropriate, that party is always free to present such information in seeking review of USAC's decision to recover monies, pursuant to section 54.722" of the rules. See School and Libraries Fifth R&O at ¶29 (emphasis added).<sup>7</sup> See also, Federal- State Joint Board On Universal Service, Order on Reconsideration and Fourth Report and Order, CC Docket Nos. 96-45, 97-21 and 02-6, FCC 04-181 (July 2004) ("Schools and Libraries Fourth R&O") at ¶10, n.30 ("any service provider is free to challenge *a recovery action directed to it* if the time frame for seeking an appeal from USAC or the Commission has not yet run.") (emphasis added). As set forth herein, there are unique and substantial reasons why USAC's efforts to collect millions of dollars from Connect2's are inappropriate under the circumstances presented here. USAC's collection efforts present "novel questions of fact, law and policy," not just with respect

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<sup>7</sup> Among other things, Section 54.722 states that "requests for review that raise novel questions of fact, law or policy" shall be considered by the full Commission.

to Connect2 and Angelides, but also with respect to their ultimate impact upon the schools and the overall goals and objectives of the Schools and Libraries program.<sup>8</sup> The Commission should not rely on USAC's erroneous interpretation of the filing requirements in sections 54.719 and 54.720 to avoid consideration of these issues on the merits, particularly where USAC's calculation of the applicable deadline is based on the questionable premise that correspondence sent to Mr. Angelides after his debarment constituted effective notice to Connect2. Thus, Connect2 respectfully requests a waiver of the filing periods set forth in Section 54.720, to the extent that such waiver is required to allow substantive consideration of the merits of its appeal.

II. Connect2's Involvement In The E-Rate Program Already Was The Subject Of A Prosecution By DOJ And A Plea Agreement.

The RODLs and USAC Decisions are part of an administrative process developed by USAC and the Commission to identify and recover, pursuant to the Federal Debt Collection Improvement Act, funds disbursed in violation of Section 254 of the Communications Act. See Schools and Libraries Fifth R&O at ¶15. However, the Commission's rules expressly state that claims "in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation on the part of the debtor...shall be referred to the Department of Justice ("DOJ") as only the DOJ has authority to compromise, suspend or terminate collection action on such claims." See 47 C.F.R. §1.1902(c) (emphasis added). In this case, DOJ already has investigated and prosecuted claims of fraud against Angelides which included the very activities that apparently are the subject of the RODLs at issue here. See, e.g., Complaint at 6-7, 14-18, 21-28, 32-33. In fact, in December 2002 the FBI seized Connect2's records regarding all of these schools in furtherance of that prosecution.

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<sup>8</sup> As the Court of Appeals noted more than 30 years ago, "sound administrative procedure" requires an agency "to take into account considerations of hardship, equity or more effective implementation of overall policy" in evaluating requests for waiver of its rules. The "combination of a general rule and limitations is the very stuff of the rule of law, and with diligent effort and attention to essentials administrative agencies may maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility." WALT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).



DOJ agreed to compromise those claims in May 2003 in return for a guilty plea from Mr. Angelides and an agreement to pay a civil forfeiture in the amount of \$290,000, “representing the approximate amount of the proceeds obtained as a result of the offense charged in Count One of the Information.” See Information, Exhibit 4, at 11; Plea Agreement, Exhibit 5, at 1. Both USAC and OIG assisted and cooperated in that prosecution, providing DOJ with access to documents, materials, audit services and other information regarding Connect2. See Complaint at ¶¶16, 18; 2003 OIG Report at 7. In return for the guilty plea and the agreement to pay \$290,000, DOJ agreed that it would not further prosecute Angelides or Connect2 “for participating, from in or about the Fall 1999 through in or about October 2002, in a scheme to defraud the Federal Government’s E-Rate school and library funding program through the submission of false, fraudulent and misleading claims and statements....” Plea Agreement at 2. Given the mandatory referral language of §1.1902(c) of the Commission’s Rules, the direct involvement of USAC and OIG with DOJ in bringing the complaint, and the compromise already effected by DOJ in the plea agreement and civil forfeiture, USAC and the Commission cannot now revisit the terms of the compromise with DOJ by seeking recovery of additional funds from Connect2.

### III. Connect2 Has Been Denied Due Process With Respect To The SLD Claims

As set forth above, USAC summarily dismissed each of Connect2’s appeals because it “was postmarked more than 60 days after your Commitment Adjustment Letter was issued, as shown above.” USAC Decision at 1. The “Decision Letter Date” was listed by USAC as April 1, 2004. However, Connect2 has no record of receiving any CALs for the schools and funding requests listed in Exhibit 1. In fact, that was one of the bases for Connect2’s appeal. See July 20, 2004 appeal letter at 2. The RODLs do not provide any information regarding the

basis for SLD's recovery demands against Connect2. As a result, with one exception,<sup>9</sup> Connect2 has not been informed of the basis for USAC's recovery demands.

Apparently, the vast majority of the recovery demands against Connect2 in terms of the dollar amounts being sought are based on claims that the schools failed to pay all or part of the non-discounted portion of the cost of equipment and services installed by Connect2 at the schools and that such failure constituted a violation of Commission rules. The criminal prosecution, in which USAC and the OIG participated, included substantially the same claims.<sup>10</sup> When Mr. Angelides accepted the plea agreement and civil forfeiture, there were no outstanding demands by USAC or the Commission for further payment by Connect2 or Mr. Angelides. Now, by employing rules and procedures adopted by the Commission years after the plea agreement and a month after the RODLs were issued, USAC seeks to recover additional funds from Connect2, apparently based on substantially the same conduct and activities that were the subject of the criminal prosecution and plea agreement.

The Commission had authorized USAC in 1999 to seek recovery of funds disbursed in violation of the statute, specifically where funds had been disbursed for ineligible services or to ineligible service providers. See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board On Universal Service, CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 (1999) ("Commitment Adjustment Order") and

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<sup>9</sup> By letter dated November 23, 2004 -- nearly one month **after** USAC had dismissed Connect2's appeals -- USAC sent another letter to Mr. Angelides forwarding for the first time a copy of an Audit Report concerning an audit that had been conducted at St. Matthew Lutheran School, one of the schools that is the subject of this Request and Petition. Although that Audit Report *apparently forms the basis for the recovery demands against Connect2 at St. Matthew's*, the report had never been provided to Connect2. Thus, with respect to that school, USAC has dismissed as "late-filed" Connect2's appeal of SLD's recovery demand, notwithstanding the fact that the appeal was filed within 60 days after the RODL was received -- and **at least four months before** SLD ever provided Connect2 with the basis for the recovery demands.

<sup>10</sup> In fact, in December 2002, prior to his arrest, Mr. Angelides and his then attorneys met with USAC and provided information and materials to USAC which reported that several of the schools at issue here had not paid the non-discounted portion of the cost of equipment and services installed by Connect2 at those schools. Connect2 will endeavor to obtain and provide copies of these materials to the Commission in the event that USAC has not provided them to the Commission.

Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board On Universal Service, 15 FCC Rcd. 22975, 22976, ¶3 (2000) (“Commitment Adjustment Implementation Order”). With respect to the schools and funding requests as issue here, Connect2 is unaware of any allegation by USAC that the equipment and services provided to the schools by Connect2 were ineligible for discounts under the Act, that Connect2 was not an eligible service provider under the Act, or that the failure of the schools to pay their non-discounted share of the costs violated the Act.

In fact, it appears that at the time the RODLs were issued to Connect2, the failure of the schools to pay their non-discounted shares was not even a violation of the Commission’s rules. The RODLs do not cite to any specific rule violation, and the Commission acknowledged in August 2004 (well after the RODLs were issued), that: “our rules do not set forth a specific timeframe for determining when a beneficiary [school] has failed to pay its non-discounted share.” Schools and Libraries Fifth R&O, at ¶24. In that decision, the Commission stated for the first time that “allowing schools and libraries to delay for an extended time their payment for services would subvert our rule that the beneficiary must pay, at a minimum ten percent of the cost of the supported services” and decided “prospectively that a failure to pay more than 90 days after completion of service...presumptively violates our rule that the beneficiary must pay its share.” Id. (emphasis added).<sup>11</sup> Thus, at the time the RODLs were sent to Mr. Angelides, the schools could have paid the non-discounted portion without violating any rule, and the fact that they had not yet done so at that time apparently did not violate any rule.

Moreover, at the time that the RODLs were issued, SLD was not authorized by the Commission to seek recovery of funds disbursed in violation of the rules of the schools and

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<sup>11</sup> Although the Commission referred to “our rule that the beneficiary must pay its share,” it cited no specific rule provision containing that requirement.

libraries support mechanism, rather than in violation of the statute.<sup>12</sup> In December 2003, on the same day that the Angelides Debarment Notice was issued, the Commission acknowledged that:

While the *Commitment Adjustment Implementation Order* implemented procedures, consistent with the Commission's debt collection rules, for recovery of funds that were disbursed in violation *statutory* requirements, *the Commission has not comprehensively addressed the question of what recovery procedures would be appropriate in situations where it is determined that funds have been disbursed in violation of particular programmatic rules* that do not implicate statutory requirements.

See Schools and Libraries Third R&O at ¶79 (emphasis added). In August 2004 -- eight months after Mr. Angelides had been debarred, more than two years after the plea agreement in the criminal proceedings, and a month after the RODLs were issued -- the Commission finally addressed that issue and provided notice for the first time of its recovery plans with respect to programmatic rule violations:

It is clear that funds disbursed in violation of the statute *or rule that implements the statute or a substantive program goal* must be recovered. In this order we identify rules of this type *and provide advance notice to all stakeholders that violation of these rules will result in recovery.*

Schools and Libraries Fifth R&O at ¶18 (emphasis added).

In short, after participating in the criminal prosecution resulting in the plea agreement and imposition of a \$290,000 civil forfeiture, USAC now seeks to recover additional funds from Connect2, apparently based on the same conduct at issue in the criminal proceedings, by applying administrative rules and procedures that did not exist until two years after the plea agreement was accepted and a month after the RODLs were issued.

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<sup>12</sup> The Commission has stated that USAC's role is "exclusively administrative" and that it is to apply only "existing decisional principles." Specifically, USAC "may not make policy, interpret unclear provisions of the statute or rules or create the equivalent of new guidelines, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, USAC must seek guidance from the Commission on how to proceed." See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Third Report and Order, 13 FCC Rcd. 25058 (1998) at ¶16.

IV. The Amounts Involved In Certain Claims Are De Minimis In Any Event.

The Commission has concluded that “it does not serve the public interest to seek to recover funds associated with statutory or rule violations when the administrative costs of seeking such recovery outweigh the dollars subject to recovery.” Schools and Libraries Fifth R&O at ¶35. With respect to certain of the funding requests at issue here, the amounts at issue are de minimis and the administrative costs of pursuing to their ultimate conclusion the recovery efforts on those funding requests are likely to exceed the amount at issue. See, e.g. Grace Lutheran Day School (\$4085.12); Grace Lutheran Elementary School, Funding Request Nos. 421315 and 421446 and Islamic Elementary School, Funding Request Nos. 424165 and 424201 (\$20,412 each); and St. Matthew Lutheran School, Funding Request Nos. 235099 (\$16,632), 235106 (\$18,135) and 367629 (\$18,144). The Commission has directed USAC “not to seek recovery of such de minimis amounts” under these circumstances and it should exercise its discretion to terminate collection activity with respect to these matter. See Schools and Libraries Fifth R&O at ¶35.

V. Demanding Full Recovery From Connect2 Is Excessive, Inequitable and Arbitrary.

The RODLs demand repayment by Connect2 of amounts totaling more than \$2.6 million. The vast majority of the repayment demands apparently are based on the schools’ failure to pay its non-discounted portion of the cost of the equipment and services installed by Connect2 and not on claims that the funds were not used to provide eligible equipment and services to the schools. Nevertheless, USAC apparently is demanding repayment from Connect2 of all of the funds that were used to acquire and install the equipment and services at the schools, because the schools failed to pay their non-discounted share, which amounts to a small fraction of the funds that USAC is demanding from Connect2. USAC’s demands are excessive, inequitable and ultimately contrary to the overall objective of the statute.

A. The Schools Have Received The Benefits Of The Disbursed Funds.

The Commission contends that it is required by statute and applicable Supreme Court precedent to recover all funds disbursed by USAC in violation of Section 254 of the Communications Act. See, e.g., Commitment Adjustment Order at ¶7; Schools and Libraries Fourth R&O at ¶¶3-5. Even assuming that the statutes and precedents cited by the Commission apply to the Universal Service Fund, which is collected, maintained and disbursed by USAC and is not intermingled with general Treasury funds, the recovery demands at issue here apparently are based on alleged violations of “the rules of this schools and libraries support mechanism,”<sup>13</sup> not violations of the statute. Although the schools apparently did not pay in full their respective shares of the cost of the equipment and services installed by Connect2, Connect2 is unaware of any claim that the funds disbursed were not used by Connect2 in manner consistent with the statute -- i.e. to provide “services to elementary schools, secondary schools and libraries for educational purposes at rates less than the amounts charged for similar services to other parties.” See 47 U.S.C. §254(h)(1)(B). The authorities cited by the Commission as the basis for its recovery obligations do not require recovery from the service provider of all disbursed amounts that actually were used to provide eligible equipment and services to the school solely because the school did not pay the full amount of its non-discounted share.

B. Demanding Recovery Exclusively From Connect2 Is Inequitable.

Even the Commission has recognized that it is inequitable to demand full recovery exclusively from the service provider of funds used to provide equipment and services to the schools in cases where the schools have failed to pay their non-discounted shares. In the

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<sup>13</sup> This assumes that the CALs regarding these schools and funding requests, if sent, contained the same language as other CALs sent to Mr. Angelides for Connect2 with respect to other schools and funding requests. See Connect2 Consolidated Request for Review and Petition for Waiver regarding 471 Application No. 191068, Funding Request No. 405672, et al., being filed separately today.

Schools and Libraries Fourth R&O, the Commission reconsidered its earlier determination to seek recovery of funds exclusively from the service provider:

[W]e conclude that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question. We do so recognizing that in many instances this will likely be the school or library, rather than the service provider. ...We are now convinced that it is both unrealistic and inequitable to seek recovery solely from the service provider.

Schools and Libraries Fourth R&O at ¶¶10, 12. The Commission also stated that “the school or library is likely to be the entity that commits an act or omission that violates...the obligation to pay the appropriate non-discounted share” of the cost of equipment and services installed at the school by the service provider. Id. at ¶15. Nevertheless, the recovery demands set forth in the RODLs at issue here seek recovery from Connect2 of more than \$2.6 million in disbursed funds used to provide equipment and services to the schools, based solely on the schools’ failure to pay the non-discounted share.

C. USAC’s Recovery Demands Are Excessive and Ultimately Inconsistent With The Objectives Of The Statute

Connect2 and Mr. Angelides already have paid a high price for their misconduct in the Schools and Libraries Program. Connect2 is essentially out of business. Mr. Angelides, a 67 year old man who had no prior record of criminal activity and had been well respected in his community, has pleaded guilty to felony charges, been assessed a substantial civil forfeiture, been debarred from the Schools and Libraries Program and been diagnosed with inoperable lung cancer that has metastasized to his brain. The collection efforts currently being undertaken by USAC constitute administrative overkill and threaten to eliminate whatever good has come from the Program at these schools.

In some cases, USAC is seeking to recover from Connect2 nearly ten times the amount that the schools purportedly failed to pay. For example, at several of the schools USAC is seeking recovery from Connect2 of hundreds of thousands of dollars, presumably based upon

the schools' failure to pay their non-discounted share (which amounts to a small fraction of the monies being sought from Connect2). However, Connect2 does not have the funds that it used to provide equipment and services to these schools and that USAC now seeks to recover. Although the Commission recently determined that USAC may seek to recover funds from the school or library as well (see Schools and Libraries Fourth R&O), the RODs at issue here relate to small private schools that are unlikely to have the financial resources to meet demands for recovery of all of the funds disbursed for equipment and services, regardless of whether those demands are made directly by USAC or indirectly by Connect2. Thus, to the extent that USAC seeks to protect the integrity of the program by attempting to recover funds that actually were used to install equipment and services at the school, but were "disbursed in error" because the school failed to pay its non-discounted share, its collection efforts will instead undermine the goals of the program because the "proceeds" of the erroneously disbursed funds exist only in the form of the equipment at the school, and recovery of those proceeds will serve only to deprive the school of continued use of the equipment and services for educational purposes.

#### Conclusion


For the reasons set forth above, Connect2 respectfully requests the Commission to grant review of the USAC Decision, to waive the requirements of Section 54.720 of the rules if such waiver is necessary to consider the merits of its appeal, and to terminate collection activity with respect to the above-referenced funding requests. In the event that the Commission decides to proceed with these recovery demands, due process requires that Connect2 be provided reasonable notice of the basis for, and an opportunity for hearing with respect to, the recovery demands at issue here.



Date: December 27, 2004

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2004, a copy of the foregoing "Consolidated Request for Review and Petition for Waiver" and certificate of service was sent via First Class Mail, postage prepaid, to:

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Brooklyn, New York 11231

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Grace Lutheran Day School  
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Grace Lutheran Elementary School  
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Islamic Elementary School C  
Al IHSAH Academy  
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Mary Help of Christians School  
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